

Amendment
Application No. 10/563,238
Attorney Docket No. 053550

REMARKS

Claim 2 is pending in the present application. Claim 1 is cancelled.

Foreign Priority

The Office Action states that the application does not comply with the requirements under 37 C.F.R. § 1.63(c). Applicant submits that the Supplemental Application Data Sheet filed on May 19, 2006 acknowledges filing of the PCT application (PCT/JP2004/009535) on July 5, 2004 and the foreign application (JP 2003-196155) on July 11, 2003.

Withdrawal of the objection to the declaration is requested.

Specification Objections

The abstract was objected to because the abstract includes references to figures. The Abstract has been amended by removing references to the figures.

Withdrawal of the objection to the Abstract is requested.

The Office Action objected to the Specification because of minor errors in the Specification. Corrections to the Specification have been made in the enclosed Substitute Specification.

Withdrawal of the objection to the Specification is requested.

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Claim Objections

The Office Action objected to claim 1 due to formatting and because it is written in a form that does not conform with U.S. Patent practice. Claim 1 has been cancelled. New claim 2 contains the substance of original claim 1 in re-written form.

Withdrawal of the objection to the claims is requested.

Claim Rejections – 35 U.S.C. § 112

Claim 1 was rejected under 35 U.S.C. § 112, second paragraph for being indefinite. Claim 1 has been cancelled. New claim 2 contains the substance of original claim 1 in re-written form.

Withdrawal of the rejection is requested.

Claim Rejections – 35 U.S.C. § 102

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by **Ciccarelli** (U.S. Patent 4,263,510). Claim 1 has been cancelled. As stated above, new claim 2 contains the substance of original claim 1 in re-written form. Thus Applicant addresses the rejection in terms of claim 2. Favorable reconsideration of the rejection is requested.

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Applicant respectfully submits that Ciccarelli does not disclose:

wherein said X-ray diffraction/spectral device obtains intensity data for each level of energy at the first position to obtain first data and at the second position to obtain second data

as recited in claim 2.

The device in Ciccarelli discloses setting the X-ray tube 22 and detector 26 at two positions relative to each other. However, the first position has an angle θ of substantially zero degrees. (Col. 5, lines 40-45 and 54-60; Fig. 3.) If θ is substantially zero degrees, then it is not possible to accurately determine energy E of the X-rays. Thus, the device in Ciccarelli is not capable of obtaining intensity data at two positions as recited in claim 2.

Ciccarelli does not disclose the elements as recited in claim 2, and therefore, claim 2 is patentable over Ciccarelli.

In view of the aforementioned amendments and accompanying remarks, Applicant submits that the claims, as herein amended, are in condition for allowance. Applicant requests such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicant's undersigned attorney to arrange for an interview to expedite the disposition of this case.

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If this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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Enclosures: Marked-Up Specification
Substitute Specification